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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 LAWRENCE E. GOMES,
12 Plaintiff,
13 v.
14 NICHOLAS KOUMJIAN, et al.,
15 Defendants.

Case No. CV 18-2801 SVW (SS)

MEMORANDUM DECISION AND ORDER
DISMISSING COMPLAINT WITH
LEAVE TO AMEND

16
17 I.

18 INTRODUCTION
19

20 Plaintiff Lawrence E. Gomes, a California state prisoner
21 proceeding pro se, constructively filed a civil rights complaint
22 pursuant to 42 U.S.C. § 1983 on April 1, 2018.¹ ("Compl.," Dkt.
23 No. 1). Congress mandates that district courts perform an initial

24 ¹ The "mailbox rule" announced by the Supreme Court in Houston v.
25 Lack, 487 U.S. 266 (1988), applies to § 1983 cases. See Douglas
26 v. Noelle, 567 F.3d 1103, 1107 (9th Cir. 2009). Pursuant to the
27 mailbox rule, pro se prisoner legal filings are deemed filed on
28 the date the prisoner delivers the document to prison officials
for forwarding to the court clerk. Id. The Court adopts the date
Plaintiff signed the Complaint as this action's constructive filing
date. See Butler v. Long, 752 F.3d 1177, 1178 n.1 (9th Cir. 2014).

1 screening of complaints in civil actions where a prisoner seeks
2 redress from a governmental entity or employee. 28 U.S.C.
3 § 1915A(a). This Court may dismiss such a complaint, or any
4 portion, before service of process if it concludes that the
5 complaint (1) is frivolous or malicious, (2) fails to state a claim
6 upon which relief can be granted, or (3) seeks monetary relief from
7 a defendant who is immune from such relief. 28 U.S.C. § 1915A(b) (1-
8 2); see also Lopez v. Smith, 203 F.3d 1122, 1126-27 & n.7 (9th Cir.
9 2000) (en banc). For the reasons stated below, the Court DISMISSES
10 the Complaint with leave to amend.²

11 12 II.

13 ALLEGATIONS OF THE COMPLAINT

14

15 Plaintiff sues (1) Los Angeles County Deputy District Attorney
16 Nicholas Koumjian, and (2) Los Angeles Police Department ("LAPD")
17 Officer Doyal G. Stepp. (Compl. at 3). Both Defendants are sued
18 in their official capacity only. (Id.).

19
20 The Complaint is nearly devoid of factual allegations.
21 However, Plaintiff appears to contend that D.D.A. Koumjian, who
22

23 ² A magistrate judge may dismiss a complaint with leave to amend
24 without the approval of a district judge. See McKeever v. Block,
25 932 F.2d 795, 798 (9th Cir. 1991) (finding that "the dismissal of
26 a complaint with leave to amend is a non-dispositive matter").
27 Consistent with McKeever, the Court concludes that its Order
28 Dismissing Complaint with Leave to Amend is a non-dispositive
Order. However, pursuant to Federal Rule of Civil Procedure 72,
if Plaintiff disagrees, he may file an objection with the District
Judge. See Bastidas v. Chappell, 791 F.3d 1155, 1162 (9th Cir.
2015).

1 apparently was the prosecutor in Plaintiff's criminal trial,
2 deliberately withheld "all relevant exculpatory never seen
3 LAPD/scientific fingerprint material and reports, information,
4 knowing that it was relevant and material to the fraud[ulent] three
5 strike conviction in Case BA122204[.]"³ (Id. at 5). Plaintiff
6 further alleges that Officer Stepp fabricated fingerprint evidence
7 against him and Koumjian knowingly used Stepp's false report during

9 ³ According to the California Court of Appeal, in 1996, a Los
10 Angeles County Superior Court jury found Plaintiff guilty of first
11 degree residential burglary in Case No. BA122204. See People v.
12 Gomes, 2013 WL 6192435, at *1 (Cal. Ct. App. Nov. 27, 2013). The
13 amended information in that case had alleged that Plaintiff had
14 suffered "eleven prior serious felony convictions that were brought
15 and tried on nine separate occasions" within the meaning of Cal.
16 Penal Code § 667(a)(1), and seven prior "serious or violent felony
17 convictions" within the meaning of Cal. Penal Code §§ 1170.12(a)-
18 (d) and 667(b)-(i). Id. However, "[p]ursuant to an agreement with
the prosecutor, [Plaintiff] admitted two prior 'strikes' in
exchange for the prosecutor dismissing all of the alleged five-
year priors, and running his sentence on his probation violations
concurrent with the burglary sentence. On January 31, 1997, the
court sentenced [Plaintiff] to state prison for a term of 25-years-
to-life." Id.

19 The California Court of Appeal affirmed Plaintiff's conviction and
20 sentence on January 28, 1998. (See California Courts Appellate
21 Court Case Information, Second Appellate Dist. Case No. B109694,
22 at <http://appellatecases.courtinfo.ca.gov/>). The California
23 Supreme Court denied Plaintiff's petition for review on April 15,
24 1998. (Id., California Supreme Court Case No. S068380). Plaintiff
remains incarcerated pursuant to his 1996/1997 conviction and
sentence. (See California Department of Corrections and
Rehabilitation Inmate Locator website, <https://inmatelocator.cdcr.ca.gov/> (reflecting Plaintiff's admission to CDCR custody on
March 11, 1997)).

25 The Court takes judicial notice of Plaintiff's prior state court
26 proceedings. See United States ex rel. Robinson Rancheria Citizens
27 Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992)
28 ("[Courts] may take notice of proceedings in other courts, both
within and without the federal judicial system, if those
proceedings have a direct relation to matters at issue.").

1 his trial, which took place between September 16-20, 1996. (Id.).
2 Koumjian's Brady violation⁴ and Stepp's false testimony caused
3 Plaintiff to spend the last twenty-three years in prison, where he
4 has suffered "rape, loss of family, illness, hep[atitis] A, B, C,
5 pain, mental anguish, 8 heart attacks, [and] time away from his
6 children[.]" (Id.).
7

8 The Complaint seeks \$20 million in aggregate damages for the
9 physical and psychological injuries that Plaintiff has suffered
10 while incarcerated. (Compl. at 6). Plaintiff anticipates that he
11 will be paroled on February 28, 2019, and requests a jury trial in
12 this matter upon his release. (Id.).
13

14 **III.**

15 **DISCUSSION**

16

17 Under 28 U.S.C. section 1915A(b), the Court must dismiss the
18 Complaint due to multiple pleading defects. However, the Court
19 must grant a pro se litigant leave to amend his defective complaint
20 unless "it is absolutely clear that the deficiencies of the
21 complaint could not be cured by amendment." Akhtar v. Mesa, 698
22 F.3d 1202, 1212 (9th Cir. 2012) (citation and internal quotation
23 marks omitted). It is highly questionable whether Plaintiff will
24 be able to cure the substantial procedural and substantive defects
25 in the Complaint. However, because Plaintiff is proceeding pro

26 ⁴ See Brady v. Maryland, 373 U.S. 83, 87 (1963) ("[T]he suppression
27 by the prosecution of evidence favorable to an accused upon request
28 violates due process where the evidence is material either to guilt
or to punishment.").

1 se, the Court will grant Plaintiff an additional opportunity to
2 state a claim. Accordingly, for the reasons stated below, the
3 Complaint is DISMISSED, with leave to amend.

4
5 **A. The Complaint Violates Rule 8**

6
7 Federal Rule of Civil Procedure 8(a)(2) requires that a
8 complaint contain “‘a short and plain statement of the claim
9 showing that the pleader is entitled to relief,’ in order to ‘give
10 the defendant fair notice of what the . . . claim is and the
11 grounds upon which it rests.’” Bell Atlantic Corp. v. Twombly,
12 550 U.S. 544, 555 (2007) (quoting Fed. R. Civ. P. 8(a)). Rule 8
13 may be violated when a pleading “says too little,” and “when a
14 pleading says too much.” Knapp v. Hogan, 738 F.3d 1106, 1108 (9th
15 Cir. 2013) (emphasis in original). Here, the Complaint says too
16 little.

17
18 To state a claim under § 1983, “a plaintiff must allege the
19 violation of a right secured by the Constitution . . . committed
20 by a person acting under color of state law.” West v. Atkins, 487
21 U.S. 42, 48 (1988). The Complaint violates Rule 8 because Plaintiff
22 does not clearly identify the nature of each of the legal claims
23 he is bringing, the specific facts giving rise to each claim, or
24 the specific Defendant or Defendants against whom each claim is
25 brought. Without more specific information, Defendants cannot
26 respond to the Complaint. See Cafasso, U.S. ex rel. v. Gen.
27 Dynamics C4 Sys., Inc., 637 F.3d 1047, 1058 (9th Cir. 2011) (a
28 complaint violates Rule 8 if a defendant would have difficulty

1 understanding and responding to the complaint). Additionally, the
2 Complaint's passing references to "deliberate indifference" and
3 the Americans with Disabilities Act are confusing because it does
4 not appear that either named Defendant had any responsibility
5 whatsoever for Plaintiff's conditions of confinement following his
6 conviction. (Compl. at 5). Furthermore, the Complaint's citations
7 to "Assembly Bill No. 1909" and California Penal Code § 141 are
8 unnecessary and fail to show a violation of a federal
9 constitutional right. (Id. at 3). Accordingly, the Complaint is
10 dismissed, with leave to amend.

11
12 **B. Plaintiff's Claims May Be Barred By The Statute Of Limitations**

13
14 Plaintiff appears to contend that Koumjian and Stepp violated
15 his civil rights during the course of his 1996 trial and related
16 proceedings. The Court advises Plaintiff that his claims, which
17 are based entirely on actions that occurred well more than twenty
18 years ago, may be barred by the statute of limitations.

19
20 "The applicable statute of limitations for actions brought
21 pursuant to 42 U.S.C. § 1983 is the forum state's statute of
22 limitations for personal injury actions." Carpinteria Valley
23 Farms, Ltd. v. County of Santa Barbara, 344 F.3d 822, 828 (9th Cir.
24 2003). Effective January 1, 2003, the statute of limitations for
25 personal injury actions in California is two years. Canatella v.
26 Van De Kamp, 486 F.3d 1128, 1132 (9th Cir. 2007) (citing Cal. Code
27 Civ. Proc. § 335.1). However, prior to that date, the statute of
28 limitations was one year. Maldonado v. Harris, 370 F.3d 945, 955

1 (9th Cir. 2004). Because the statute extending the statute of
2 limitations for personal injury actions from one year to two years
3 “does not apply retroactively, any cause of action that was more
4 than one-year old as of January 1, 2003 would be barred under the
5 previous one-year statute of limitations.” Canatella, 486 F.3d at
6 1132-33; see also Maldonado, 370 F.3d at 955 (“In enacting the new
7 two-year statute of limitations, the California Legislature made
8 it applicable retroactively only to the victims of the terrorist
9 attacks of September 11, 2001.”).

10
11 While state law determines the statute of limitations for
12 § 1983 claims, “federal law determines when a civil rights claim
13 accrues.” Azer v. Connell, 306 F.3d 930, 936 (9th Cir. 2002)
14 (quoting Morales v. City of Los Angeles, 214 F.3d 1151, 1153-54
15 (9th Cir. 2000)). Under federal law, “a claim accrues when the
16 plaintiff knows or should know of the injury that is the basis of
17 the cause of action.” Douglas, 567 F.3d at 1109; Maldonado, 370
18 F.3d at 955.

19
20 When a federal court borrows the state statute of limitations,
21 it also borrows the state’s tolling rules. Canatella, 486 F.3d at
22 1132. This applies to both statutory and equitable tolling. See
23 Jones v. Blanas, 393 F.3d 918, 927 (9th Cir. 2004) (“For actions
24 under 42 U.S.C. § 1983, courts apply the forum state’s statute of
25 limitations for personal injury actions, along with the forum
26 state’s law regarding tolling, including equitable tolling, except
27 to the extent any of these laws is inconsistent with federal law.”).

1 California Civil Procedure Code § 352.1(a), enacted on January
2 1, 1995, provides that when a plaintiff is "imprisoned on a criminal
3 charge" for "a term less than life" at the time a claim accrues,
4 the statute of limitations is statutorily tolled during the time
5 of his imprisonment for up to two more years. See Cal. Civ. Proc.
6 Code § 352.1(a); see also Fink v. Shedler, 192 F.3d 911, 914 (9th
7 Cir. 1999) (citing same). The California Court of Appeal has held
8 as a matter of first impression in a recent decision that "a would-
9 be plaintiff is 'imprisoned on a criminal charge' within the
10 meaning of section 352.1 [only] if he or she is serving a term of
11 imprisonment in the state prison." Austin v. Medicis, 21 Cal. App.
12 5th 577, 597 (2018). Accordingly, the Austin court found that an
13 arrestee who was in pretrial custody in a county jail at the time
14 his claims accrued was not "imprisoned on a criminal charge" for
15 purposes of § 352.1 and the statute's automatic tolling provisions
16 did not apply. Id.; see also Groce v. Claudat, 603 F. App'x 581,
17 582 (9th Cir. 2015) (§ 352.1 inapplicable where plaintiff "was not
18 incarcerated when his claims accrued").

19
20 Whether or not a prisoner plaintiff is entitled to the
21 automatic tolling provisions of § 352.1, equitable tolling may
22 still extend the running of the statute of limitations. "Equitable
23 tolling under California law 'operates independently of the literal
24 wording of the Code of Civil Procedure to suspend or extend a
25 statute of limitations as necessary to ensure fundamental
26 practicality and fairness.'" Jones, 393 F.3d 918, 928 (quoting
27 Lantzy v. Centex Homes, 31 Cal. 4th 363, 370 (2003)). "Under
28 California law, a plaintiff must meet three conditions to equitably

1 toll a statute of limitations: (1) defendant must have had timely
2 notice of the claim; (2) defendant must not be prejudiced by being
3 required to defend the otherwise barred claim; and (3) plaintiff's
4 conduct must have been reasonable and in good faith." Fink, 192
5 F.3d at 916 (internal quotation marks and citation omitted).

6
7 It is not entirely clear from the Complaint when Plaintiff's
8 claims accrued. According to the Ninth Circuit, a claim that
9 fabricated evidence was used to obtain a conviction accrues when
10 the plaintiff learns of the fabrication, even if challenges to the
11 conviction are still pending. Bagley v. CMC Real Estate Corp.,
12 923 F.2d 758, 762 (1991). Here, Plaintiff alleges that Koumjian
13 withheld exculpatory evidence from Plaintiff prior to trial and
14 knowingly used false evidence created by Stepp during trial, which
15 suggests that Plaintiff may have learned of the facts giving rise
16 to his claims at some point between the close of evidence in his
17 criminal trial and at the conclusion of his direct appeals.
18 However, the Complaint does not provide sufficient information for
19 the Court to determine whether the statute of limitations began to
20 run during that period or on some other date. Similarly, the
21 Complaint's allegations do not address Plaintiff's entitlement to
22 equitable tolling.

23
24 To the extent that Plaintiff is attempting to raise claims
25 based on what Defendants did or did not do in 1996, he is advised
26 that such claims may be barred by the statute of limitations. In
27 any amended complaint, Plaintiff should consider whether his claims
28 are subject to a statute of limitations bar, and whether grounds

1 for tolling exists. Plaintiff is advised that this Order is not a
2 dispositive ruling on any issue. Instead, the Court is dismissing
3 certain claims that are defective, but granting leave to amend.
4 Furthermore, the Court is not making any dispositive ruling on the
5 timeliness of the Complaint or the claims in the Complaint. Rather,
6 the Court is simply advising Plaintiff of this potential issue and
7 raising it for Plaintiff's consideration in any amended complaint.
8

9 **C. Plaintiff's Claims May Be Barred By The Heck Doctrine Because**
10 **His Conviction Has Not Been Vacated Or Reversed**
11

12 In Heck v. Humphrey, 512 U.S. 477 (1994), the Supreme Court
13 held that a civil rights complaint for money damages must be
14 dismissed if judgment in favor of the plaintiff would undermine
15 the validity of his conviction or sentence, unless the "conviction
16 or sentence has been reversed on direct appeal, expunged by
17 executive order, declared invalid by a state tribunal authorized
18 to make such determination, or called into question by a federal
19 court's issuance of a writ of habeas corpus." Id. at 486-87.
20 However, the Heck Court also explained that if a "plaintiff's
21 action, even if successful, will not demonstrate the invalidity of
22 any outstanding criminal judgment against the plaintiff, the action
23 should be allowed to proceed, in the absence of some other bar to
24 the suit." Id. at 487 (footnotes omitted). Even where a claim
25 survives the Heck bar, to obtain money damages, the plaintiff must
26 show that the defendant's actions "caused him actual, compensable
27 injury," which "does not encompass the 'injury' of being convicted
28

1 and imprisoned (until his conviction has been overturned).” Id.
2 at 487 n.7.

3
4 Accordingly, the Ninth Circuit has found that a claim alleging
5 that defendants falsified a warrant application was Heck-barred
6 because it challenged the “search and seizure of the evidence upon
7 which [plaintiff’s] criminal charges and convictions were based.”
8 Whitaker v. Garcetti, 486 F.3d 572, 583-84 (9th Cir. 2007).
9 However, the Ninth Circuit also instructs that Heck would not
10 preclude an excessive force claim “[b]ecause a successful section
11 1983 action for excessive force would not necessarily imply the
12 invalidity of [plaintiff’s] arrest or conviction[.]” Smithart v.
13 Towery, 79 F.3d 951, 952 (9th Cir. 1996) (per curiam). Several
14 courts have explicitly found that prisoner civil rights claims
15 alleging the fabrication of evidence or Brady violations are barred
16 by Heck until the prisoner’s conviction has been overturned. See,
17 e.g., Cooper v. Ramos, 704 F.3d 772, 785 (9th Cir. 2012)
18 (“Successfully litigating [plaintiff’s] claims of an evidence
19 tampering conspiracy would necessarily implicate the validity of
20 his state criminal conviction. These claims are not cognizable
21 unless [plaintiff’s] conviction is vacated, overturned, or
22 invalidated.”) (citing Heck, 512 U.S. at 486-87); Sexual Sin De Un
23 Abdul Blue v. City of Los Angeles, 2010 WL 890172, at *7 (C.D. Cal.
24 Mar. 8, 2010) (“[A] successful showing that Officer Craig
25 fabricated evidence and gave false testimony in order to convict
26 plaintiff would necessarily imply the invalidity of plaintiff’s
27 conviction of a parole violation. Accordingly, plaintiff’s claim
28 is barred by Heck and must be dismissed.”); Whitmore v. Dort, 2015

1 WL 12859233, at *3 (S.D. Cal. Oct. 7, 2015) (“[A] claim that
2 involves allegations of a constitutional violation under Brady v.
3 Maryland is clearly barred by Heck.”); Williams v. Pfeiffer, 2016
4 WL 943840, at *3 n.4 (C.D. Cal. Feb. 3, 2016), adopted, 2016 WL
5 953193 (C.D. Cal. Mar. 11, 2016) (action raising “Brady-based claim
6 failed to state a claim upon which relief could be granted[] because
7 it was barred” by Heck and therefore qualified as third “strike”
8 pursuant to 28 U.S. § 1915(g)).

9
10 If successful, Plaintiff’s claims regarding Defendants’
11 fabrication and withholding of evidence would appear to undermine
12 the validity of Plaintiff’s conviction, contrary to the Heck
13 doctrine. However, Plaintiff will be given leave to amend so that
14 he may attempt to cure this deficiency, to the extent he is able.
15 If Plaintiff chooses to pursue his claims, he should allege facts
16 (1) identifying the particular evidence that Koumjian allegedly
17 withheld and that Stepp fabricated, and (2) showing how granting
18 the claims would not necessarily imply the invalidity of
19 Plaintiff’s conviction for first degree residential burglary or
20 his prior strikes admissions. Accordingly, the Complaint is
21 dismissed, with leave to amend.

22
23 **D. The Complaint’s Claims Against Koumjian May Be Barred By The**
24 **Doctrine Of Absolute Prosecutorial Immunity**

25
26 Even if Plaintiff is able to plead around the Heck bar, his
27 claims against D.D.A. Koumjian for actions taken in his role as an
28 advocate for the state in Plaintiff’s criminal trial may be barred

1 by the doctrine of absolute prosecutorial immunity, which "applies
2 to § 1983 claims." Garmon v. Cnty. of Los Angeles, 828 F.3d 837,
3 842 (9th Cir. 2016). Pursuant to that doctrine, "[s]tate
4 prosecutors are absolutely immune from § 1983 actions when
5 performing functions 'intimately associated with the judicial phase
6 of the criminal process,' or, phrased differently, 'when performing
7 the traditional functions of an advocate.'" Id. (quoting Imbler
8 v. Pachtman, 424 U.S. 409, 430 (1976)); see also Kalina v. Fletcher,
9 522 U.S. 118, 131 (1997)). Prosecutorial immunity applies in such
10 instances even when the act is "malicious or dishonest." Genzler
11 v. Longanbach, 410 F.3d 630, 637 (9th Cir. 2005). Accordingly, a
12 prosecutor is absolutely immune from suit for "'initiating a
13 prosecution' and 'presenting the State's case,' and during
14 'professional evaluation of the evidence assembled by the police
15 and appropriate preparation for its presentation at trial . . .
16 after a decision to seek an indictment has been made.'" Garmon,
17 828 F.3d at 843 (quoting Imbler, 424 U.S. at 431; Buckley v.
18 Fitzsimmons, 509 U.S. 259, 273 (1993)). A prosecutor is also
19 protected by absolute immunity "in connection with the preparation
20 of an arrest warrant," during "appearances before a grand jury,"
21 "in a probable cause hearing," and "in trial." Lacey v. Maricopa
22 Cnty., 693 F.3d 896, 933 (9th Cir. 2012) (citing Kalina, 522 U.S.
23 at 129); Burns v. Reed, 500 U.S. 478, 490 & n.6 (1991); Imbler,
24 424 U.S. at 430-31); see also Milstein v. Cooley, 257 F.3d 1004,
25 1012 (9th Cir. 2001) ("Appearing in court to argue a motion is a
26 quintessential act of advocacy.").

27 \\
28 \\
13

1 Absolute immunity applies even if it "leave[s] the genuinely
2 wronged defendant without civil redress against a prosecutor whose
3 malicious or dishonest action deprives him of liberty." Imbler,
4 424 U.S. at 432; see also Broam v. Bogan, 320 F.3d 1023, 1029-30
5 (9th Cir. 2003) ("A prosecutor is absolutely immune from liability
6 for failure to investigate the accusations against a defendant
7 before filing charges. . . . A prosecutor is also absolutely immune
8 from liability for the knowing use of false testimony at trial.").
9 However, prosecutors are entitled only to "qualified immunity,
10 rather than absolute immunity, when they perform administrative
11 functions, or 'investigative functions normally performed by a
12 detective or police officer.'" Genzler, 410 F.3d at 636 (quoting
13 Kalina, 522 U.S. at 126).⁵

14
15 Courts look to the "nature of the function performed" when
16 determining if a prosecutor's actions are those of an advocate,
17 which are protected by absolute immunity, or of an administrator
18 or investigator, which are not. Garmon, 828 F.3d at 843 (quoting
19 Buckley, 509 U.S. at 269). For example, "decisions to hire,
20 promote, transfer and terminate" employees, "which do not affect
21

22 ⁵ "The doctrine of qualified immunity protects government officials
23 'from liability for civil damages insofar as their conduct does
24 not violate clearly established statutory or constitutional rights
25 of which a reasonable person would have known.'" Pearson v.
26 Callahan, 555 U.S. 223, 231 (2009) (citation omitted). In
27 analyzing whether qualified immunity applies, a court must
28 determine "whether, taken in the light most favorable to
Plaintiffs, Defendants' conduct amounted to a constitutional
violation, and . . . whether or not the right was clearly
established at the time of the violation." Bull v. City and Cnty.
of San Francisco, 595 F.3d 964, 971 (9th Cir. 2010) (citation and
alteration omitted).

1 the prosecutor's role in any particular matter," are generally
2 deemed administrative functions not protected by absolute immunity.
3 Lacey, 693 F.3d at 931. Similarly, "[a]bsolute immunity does not
4 apply when a prosecutor 'gives advice to police during a criminal
5 investigation,' 'makes statements to the press,' or 'acts as a
6 complaining witness in support of an arrest warrant application.'" Garmon, 828 F.3d at 843 (quoting Van de Kamp v. Goldstein, 555 U.S.
7 335, 343 (2009)) (brackets omitted; emphasis added); see also
8 Milstein, 257 F.3d at 1101 (filing a false crime report is not
9 protected by absolute immunity). Absolute immunity also does not
10 apply if a prosecutor knowingly fabricates evidence. Garmon, 828
11 F.3d at 843; see also Genzler, 410 F.3d at 638 (absolute immunity
12 did not apply where prosecutor told witness to lie in meeting held
13 prior to preliminary hearing because the prosecutor was "engaged
14 in the process of acquiring or manufacturing evidence during
15 performance of police-type investigative work").

16
17
18 The specific bases and scope of Plaintiff's claims against
19 Koumjian are not clearly articulated. Accordingly, it is uncertain
20 whether they are barred, in whole or in part, by the doctrine of
21 absolute prosecutorial immunity. Plaintiff is cautioned that
22 Koumjian's actions as an advocate are likely to be so protected.
23 However, Plaintiff will be given leave to amend so that he may
24 attempt to cure this deficiency, to the extent he is able. If
25 Plaintiff chooses to pursue his claims against Koumjian, he should
26 allege facts showing that the actions taken by Koumjian that form
27 the basis of his claims fell outside his role as an advocate.
28 Accordingly, the Complaint is dismissed, with leave to amend.

1 **E. The Complaint Fails To State A Claim Against Defendants In**
2 **Their Official Capacity**

3
4 Plaintiff sues Defendants in their official capacities only.
5 (Compl. at 3). A suit against a defendant in his individual
6 capacity "seek[s] to impose personal liability upon a government
7 official for actions he takes under color of state law. . . .
8 Official-capacity suits, in contrast, generally represent only
9 another way of pleading an action against an entity of which an
10 officer is an agent." Kentucky v. Graham, 473 U.S. 159, 165 (1985)
11 (internal quotation marks omitted); see also Community House, Inc.
12 v. City of Boise, Idaho, 623 F.3d 945, 966-67 (9th Cir. 2010) (an
13 official capacity suit is treated as a suit against the entity).
14

15 According to the Ninth Circuit, a California county district
16 attorney is a state official, not a county official, when
17 performing prosecutorial functions. See Del Campo v. Kennedy, 517
18 F.3d 1070, 1073 (9th Cir. 2008); Weiner v. San Diego County, 210
19 F.3d 1025, 1028-29 (9th Cir. 2000) (San Diego County D.A. acted as
20 agent of the state, not the county, in allegedly withholding
21 exculpatory evidence from a defendant). Accordingly, a claim
22 against Koumjian in his official capacity is functionally a claim
23 against the state. Stepp, an LAPD officer, is an employee of the
24 City of Los Angeles. Accordingly, a claim against Stepp in his
25 official capacity is functionally a claim against the City of Los
26 Angeles. For different reasons, Plaintiff's official capacity
27 claims against Koumjian and Stepp fail to state a claim.
28

1 **1. The Eleventh Amendment Bars Claims For Money Damages**
2 **Against Koumjian In His Official Capacity**

3
4 While a state employee may be sued for money damages in his
5 or her individual capacity, the Eleventh Amendment bars claims for
6 money damages against state employees in their official capacity.
7 Hafer v. Melo, 502 U.S. 21, 27 (1991). Pursuant to the Eleventh
8 Amendment, a state and its official arms are immune from suit under
9 section 1983. Howlett v. Rose, 496 U.S. 356, 365 (1990); Brown v.
10 Cal. Dept. of Corrections, 554 F.3d 747, 752 (9th Cir. 2009)
11 ("California has not waived its Eleventh Amendment immunity with
12 respect to claims brought under § 1983 in federal court"). "[A]
13 suit against a state official in his or her official capacity . . .
14 is no different from a suit against the State itself." Flint v.
15 Dennison, 488 F.3d 816, 824-25 (9th Cir. 2007) (citation omitted).
16 Therefore, state officials sued for money damages in their official
17 capacity under § 1983 are generally entitled to immunity. Id. at
18 825. However, the Eleventh Amendment does not bar official
19 capacity claims against state officials under § 1983 for
20 prospective injunctive relief. Id. (citing Graham, 473 U.S. at
21 167 n.14).

22
23 A claim against Koumjian in his official capacity is
24 essentially a suit against the State of California. Plaintiff does
25 not seek prospective injunctive relief, but instead prays only for
26 money damages. Accordingly, Plaintiff's claims for money damages
27 against Koumjian in his official capacity are barred by the
28 Eleventh Amendment and must be dismissed.

1 **2. Plaintiff's Claims Against Stepp In His Official Capacity**
2 **Are Barred By The Monell Doctrine**

3
4 Unlike a state, a local governmental entity, such as a city
5 or county, may be liable for money damages in a § 1983 action.
6 Monell v. Dep't of Soc. Servs. of City of New York, 436 U.S. 658,
7 690 n.54 (1978); Pembaur v. City of Cincinnati, 475 U.S. 469, 483
8 (1986) (extending Monell's analysis of municipal liability to
9 counties). However, a local government entity is not liable under
10 § 1983 simply because its employees violated the plaintiff's
11 constitutional rights. Monell, 436 U.S. at 691. To assert a
12 valid section 1983 claim against a municipal defendant, a plaintiff
13 must show both a deprivation of constitutional rights and a
14 departmental policy, custom or practice that was the "moving force"
15 behind the constitutional violation. Villegas v. Gilroy Garlic
16 Festival Ass'n, 541 F.3d 950, 957 (9th Cir. 2008). There must be
17 "a direct causal link between a municipal policy or custom and the
18 alleged constitutional deprivation." See id. (quoting City of
19 Canton v. Harris, 489 U.S. 378, 385 (1989)).

20
21 Plaintiff's claims against Stepp in his official capacity are
22 essentially claims against the City of Los Angeles. However,
23 Plaintiff does not identify a City of Los Angeles policy, custom
24 or practice that led to his alleged injury. As such, Plaintiff
25 fails to state a valid constitutional claim against the City.
26 Accordingly, the Complaint is dismissed, with leave to amend.

27 \\

28 \\

1 IV.

2 CONCLUSION

3
4 For the reasons stated above, the Complaint is dismissed with
5 leave to amend. If Plaintiff still wishes to pursue this action,
6 he is granted **thirty (30) days** from the date of this Memorandum
7 and Order within which to file a First Amended Complaint. In any
8 amended complaint, Plaintiff shall **cure the defects** described
9 above. **Plaintiff shall not include new defendants or new**
10 **allegations that are not reasonably related to the claims asserted**
11 **in the Complaint.** The First Amended Complaint, if any, shall be
12 complete in itself and shall not refer in any manner to the original
13 Complaint. Its caption page shall bear the designation "First
14 Amended Complaint" and the case number assigned to this action.
15

16 The First Amended Complaint should be short and concise. In
17 any amended complaint, Plaintiff should confine his allegations to
18 those operative facts supporting each of his claims. Plaintiff is
19 advised that pursuant to Federal Rule of Civil Procedure 8(a), all
20 that is required is a "short and plain statement of the claim
21 showing that the pleader is entitled to relief." **Plaintiff is**
22 **strongly encouraged to utilize the standard civil rights complaint**
23 **form when filing any amended complaint, a copy of which is attached.**
24 In any amended complaint, Plaintiff should identify the nature of
25 each separate legal claim and the Defendant (by name) against whom
26 the claim is asserted, and make clear which specific factual
27 allegations support each separate claim. Plaintiff is strongly
28 encouraged to keep his statements concise and to omit irrelevant

1 details. It is not necessary for Plaintiff to cite case law or
2 include legal argument.

3
4 Plaintiff is explicitly cautioned that failure to timely file
5 a First Amended Complaint, or failure to correct the deficiencies
6 described above, will result in a recommendation that this action
7 be dismissed with prejudice for failure to prosecute and obey Court
8 orders pursuant to Federal Rule of Civil Procedure 41(b).
9 Plaintiff is further advised that if he no longer wishes to pursue
10 this action, he may voluntarily dismiss it by filing a Notice of
11 Dismissal in accordance with Federal Rule of Civil Procedure
12 41(a)(1). A form Notice of Dismissal is attached for Plaintiff's
13 convenience. If Plaintiff utilizes the Notice of Dismissal, he is
14 instructed to clearly state whether he is dismissing the entire
15 action or only certain claims or certain Defendants.

16
17 DATED: June 15, 2018

18
19 /s/
20 SUZANNE H. SEGAL
UNITED STATES MAGISTRATE JUDGE

21
22 THIS DECISION IS NOT INTENDED FOR PUBLICATION IN LEXIS, WESTLAW OR
23 ANY OTHER LEGAL DATABASE.